IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

FRIDAY, THE 8TH JUNE 2007 / 18TH JYAISHTA 1929

MFA.No. 464 of 2001()

OPMV.1526/1993 of MOTOR ACCIDENT CLAIMS TRIBUNAL, PUNALUR
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APPELLANT/PETITIONER:

K.T.JOHNSON,EDUPADIKKAL EBENEZER HOME,
OYOOR P.O., KOLLAM.

BY ADV. SRI.P.B.SURESH KUMAR

RESPONDENTS/RESPONDENTS:

1.BABU, JALAJA MANDIRAM,
MUNDAKKAL WARD, KOLLAM.

2.CHANDRA BABU, KETTIDATHIL VEEDU,
VADAKKEVILA VILLAGE, KOLLAM.

3.THE ORIENTAL INSURANCE CO. LTD., KOLLAM.

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA) FOR R3
DR.K.P.SATHEESAN FOR R1 AND R2
SRI.M.R.JAYAPRASAD

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 08/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.464 OF 2001 (B)

Dated this the 8th day of June, 2007

J U D G M E N T

KOSHY,J.

Appellant/Claimant filed an application for compensation contending that as a result of the accident due to the negligence of the driver of the vehicle insured by the 3rd respondent, his left leg below knee was fractured and there was also fracture of the left heel apart from the fracture of both bones. Medical Board certified 12% disability. He filed the application before the Motor Accident Claims Tribunal, Kollam, on 22.4.1992 as O.P.(MV) No.793/1992 claiming a compensation of Rs.2,00,000/-. The application filed before the M.A.C.T. Kollam was transferred to M.A.C.T. Punalur and it was re-numbered as O.P.(MV).No.1526/1993. Thereafter he filed I.A.No.998/1999 for enhancing the claim amount from Rs.2,00,000/- to Rs.7,00,000/-. The said application was allowed on 11.10.1999. Against the claim of Rs.7,00,000/-

Tribunal allowed only Rs.1,40,000/- with 12% interest from 11.10.1999.

2. Two contentions are raised. First contention is that the amount awarded is very low. According to the petitioner he is a Diploma holder in Engineering and after working for sometime in Gulf he was doing work of his own. In the absence of any evidence, monthly income was taken as Rs.2,000/-. According to the petitioner, at least double the amount ought have been taken as his monthly income considering his qualification. However, the incident occurred in 1991 and in the absence of any particulars, we see no ground to change the monthly income taken by the Tribunal. Tribunal has taken the percentage of disability as 12% on the terms of Medical certificate and calculated compensation. Even though actual medical bills were produced (Exts.A13 and A25) for Rs.41,000/- only Rs.35,000/- was awarded and therefore there is deficiency of Rs.6,000/-. We are of the opinion that the above Rs.6,000/- ought have been awarded as reasons for rejecting the medical bills is not explained by the Tribunal.

3. Next contention is that he filed an application in 1999 only for enhancing the compensation. But tribunal mistakenly considered the above I.A. as restoring of claim petition. Tribunal then has granted interest from 1999 onwards. But the application was filed in 1992 and therefore he is entitled to interest from 22.4.1992 onwards. However we note that the amount awarded is more than Rs.1,00,000/- and 12% interest was also granted. Considering the rate of interest granted we see no ground to interfere in the above. The additional amount of Rs.6,000/- we have granted should be deposited by the 3rd respondent with 8% interest from the date of application, that is, 22.4.1992 till the date of deposit within two months from the date of receipt of copy of this judgment. On deposit, appellant is allowed to withdraw the same. With the above observations this appeal is partly allowed.

J.B.KOSHY, JUDGE

K.P.BALACHANDRAN, JUDGE

prp

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.NO.464 OF 2001 (B)

J U D G M E N T

8th June, 2007